

DND Identification Number: 89061025
JFCOM -01

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF DEFENSE OF THE UNITED STATES OF
AMERICA
AND
THE DEPARTMENT OF NATIONAL DEFENCE OF CANADA
CONCERNING
MUTUAL SUPPORT

Eff: 21 OCT 99

SECTION 1

INTRODUCTION

- 1.1 The Department of Defense of the United States of America (DoD) and the Department of National Defence of Canada (DND), hereinafter referred to as the "Participants":

Desiring to further the rationalization, interoperability, readiness, and effectiveness of their respective military forces through increased cooperation; and

Desiring to establish the basis for provision of mutual logistic support, supplies and services (LSSS) and to establish equitability in reciprocal arrangements,

Have resolved to conclude this Memorandum of Understanding (MOU) with the purpose of establishing the basis for the provision of mutual LSSS.

- 1.2 This MOU replaces the MOU concerning Mutual Support between the Department of Defense of the United States of America and the Department of National Defence of Canada dated 30 December, 1994.
- 1.3 This MOU is subject to the provisions of the Agreement Concerning the Establishment of certain Mutual Defence Commitments between the Government of the United States of America and the Government of Canada dated 19 August 1994.

SECTION 2

DEFINITIONS

- 2.1 As used in this MOU and in any implementing arrangements (IA) which provide for specific procedures, the following definitions apply:

**Exchange for
Equal Value**

An exchange transaction conducted under this MOU in which the Receiving Participant replaces LSSS which it has received with LSSS of equal value.

**Implementing
Arrangement
(IA)**

A written, supplementary arrangement related to the specific acquisition and/or transfer of LSSS, which sets forth the additional details and provisions which further define and carry out this MOU and which is an integral part of and subordinate to this MOU.

Invoice	A document from the Supplying Participant which requests reimbursement or payment for specific LSSS rendered pursuant to this MOU and any applicable IA, if any.
Logistic Support, Supplies, and Services (LSSS)	Food, water, billeting, transportation (including airlift), petroleum, oils, lubricants, clothing, communication services, medical services, ammunition, base operation support (and construction incident to base operations support), storage services, use of facilities, training services, spare parts and components, repair and maintenance services (including recovery), airport, and seaport services. Also includes the temporary use of general purpose vehicles and other non-lethal items of military equipment which are not designated as significant military equipment on the U.S. Munitions List.
Order	When in its proper form and signed by an authorized official (see paragraph 3.6) it is a request for the provision of specific LSSS pursuant to this MOU and any applicable IA, if any.
Receiving Participant	The Participant ordering and receiving LSSS.
Replacement-in-kind	An exchange transaction conducted under this MOU in which the Receiving Participant replaces LSSS which it has received with LSSS of an identical, or substantially identical, nature.
Supplying Participant	The Participant providing LSSS.
Transfer	Selling (whether for payment in cash, replacement-in-kind, or exchange of LSSS of equal value), leasing, loaning, or otherwise temporarily providing, LSSS, under the provisions of this MOU.
United States Munitions List	United States of America defense articles and defense services which are designated by the United States President under the Arms Export Control Act as subject to export and import controls. The United States Munitions List is published in Part 121 of Title 22 of the U.S. Code of Federal Regulations.

SECTION 3

OBJECTIVES AND SCOPE

- 3.1 This MOU applies to the provision of LSSS to the military forces of one Participant by the military forces of the other Participant in return for either cash payment or the reciprocal provision of LSSS. LSSS provided under this MOU will be used primarily during combined exercises, training, deployments, operations, or other cooperative efforts, and for unforeseen circumstances or exigencies in which one of the Participants may have a need of LSSS.
- 3.2 The Participants understand that this MOU will not be employed in a manner to serve as a routine and normal source for supplies and services reasonably available from commercial sources in the United States of America or Canada. Acquisitions and transfers under this MOU and any IA executed hereunder are made subject to the availability of appropriations for such purposes and acquisition and transfer limitations established by the Participants' laws and regulations. All responsibilities of the Participants under this MOU are subject to the availability of funds for such purposes.
- 3.3 ~~Excluded from transfer are:~~
- 3.3.1 Weapons systems,
 - 3.3.2 Major end items of equipment, except for the temporary use of general purpose equipment (vehicles and other non-lethal items of military equipment which are not designated as significant military equipment on the U.S. Munitions List or similarly designated by Canada under law or regulation).
 - 3.3.3 Initial quantities of replacement spare parts associated with the initial order quantity of major items of organizational equipment covered in tables of allowances and distribution, tables of organization and equipment, or equivalent documents.
 - 3.3.4 Also excluded from transfer by either Participant under this MOU are any items the transfer of which are prohibited by its laws or regulations:
 - 3.3.4.1 Guided missiles;
 - 3.3.4.2 Naval mines and torpedoes;
 - 3.3.4.3 Nuclear ammunition and included items such as warheads, warhead sections, projectiles, demolition munitions, and training ammunition;

- 3.3.4.4 Cartridge and propellant-actuated devices (store release devices, safety devices and flares);
- 3.3.4.5 Chaff and chaff dispensers;
- 3.3.4.6 Guidance kits for bombs or other ammunition;
- 3.3.4.7 Chemical ammunition (other than riot control agents);
- 3.3.4.8 Source, byproduct or special nuclear materials, or any other material, article, data or thing of value, the transfer of which is subject to the Atomic Energy Act of 1954 (Title 42, United States Code, section 2011, *et seq*), and the Canadian Atomic Energy Control Act (RSC 1985, Ch A-16).

- 3.4 Each Participant, recognizing the spirit of cooperation reflected in the MOU, will utilize its best endeavours, consistent with national priorities and legislation, not only in peacetime but also in periods of emergency or active hostilities, to satisfy requests of the other Participant for LSSS. It is understood that in using best endeavours, neither Participant is required to provide LSSS which would impair the support of its own requirements or other commitments.
- 3.5 In all transactions involving the transfer of LSSS, the Receiving Participant concedes that such LSSS will not be retransferred, either temporarily or permanently, by any means to other than the forces of the Receiving Participant without prior written consent of the Supplying Participant.
- 3.6 The transfer of LSSS between the Participants will be accomplished by Orders issued and accepted under this MOU and/or applicable IA. Orders will be issued:
 - 3.6.1 Against this MOU alone:
 - 3.6.1.1 during times of tension and active hostilities;
 - 3.6.1.2 for LSSS required and not covered by an IA provided the Participants to the transaction (or their designated representatives) concur.
 - 3.6.2 By means of an IA for all other transactions.

3.7 IA may be negotiated:

3.7.1 On the part of DoD, by any Unified, Specified, or Component Command or their designated, subordinate commands. IAs negotiated by commands other than the U.S. Joint Forces Command (USJFCOM) will be coordinated with USJFCOM.

3.7.2 On the part of DND, by the Assistant Deputy Minister (Materiel), or designated authorities.

3.8 Prior to submitting a written order, the Receiving Participant will initially contact the Supplying Participant's POC by telephone, fax, or e-mail to ascertain availability, price, and desired method of repayment for required LSSS. Whether the transfer is accomplished by Orders under this MOU alone or in conjunction with an IA, the documents taken together must set forth all necessary details and provisions to carry out the transfer. The essential data elements required for a transfer, either under this MOU alone or by means of an IA, are contained in Annex A. In the event of extreme urgency, the Participants may consent to expedited procedures to effect timely transfer of LSSS. In such cases, the Order will subsequently be prepared.

3.9 The Receiving Participant is responsible for:

3.9.1 Arranging pickup and transportation of supplies ordered under this MOU. The Supplying Participant will notify the Receiving Participant when and where supplies are available to be picked up, and may, if desired, assist in loading the supplies into the transportation conveyance.

3.9.2 Obtaining the applicable customs clearance and arranging other official actions needed in relation to national customs regulations.

3.10 The individual picking up the supplies or receiving the services on behalf of the Receiving Participant will sign the standard or agreed upon order form as evidence of receipt. If the order form is not available at the Supplying Participant's point of issue, the individual collecting the supplies will sign the receipt documents provided by the Supplying Participant as a substitute. Both the Supplying Participant's issue point and the individual picking up supplies, however, must ensure the number of this MOU appears on all receipt documents. Whenever possible, the Supplying Participant will forward copies of all signed receipt documents to the Receiving Participant with the Invoice for payment.

SECTION 4

FINANCIAL ARRANGEMENTS

- 4.1 For any LSSS, the Participants may negotiate for payment either in cash in the currency specified by the Supplying Participant ("**Reimbursable Transaction**"); or replacement in kind ("**Replacement in Kind Transaction**"); or exchange for equal value ("**Exchange for Equal Value Transaction**"). Accordingly, the Receiving Participant will reimburse the Supplying Participant in conformance with paragraphs 4.2, 4.3 or 4.4.
- 4.2 **Reimbursable Transaction.** The Supplying Participant will submit Invoices to the Receiving Participant after delivery or performance of the LSSS. Both Participants will maintain records of all transactions, and the Supplying Participant will invoice promptly. The Invoice will normally be paid within 60 days of the invoice. In pricing a reimbursable transaction, the Participants consent to the following principles:
- 4.2.1 In the case of specific acquisition by the Supplying Participant from its contractors for a Receiving Participant, the price will be no less favourable than the price charged the armed forces by the contractor of the Supplying Participant for identical items or services, less any amounts excluded by paragraph 5.1 of this MOU.
- 4.2.2 In the case of transfer from the Supplying Participant's own resources, the Supplying Participant will charge the same price it charges its own forces, for identical LSSS, as of the date the Order is accepted or delivery or performance occurs as the Participants may determine, less any amounts excluded by paragraph 5.1 of this MOU. In any case where a price has not been established or charges are not made for one's own forces, the Participants will agree on a price in advance, in accordance with the reciprocal pricing principles detailed in para 4.2.4, less any amount excluded by para 5.1 of this MOU.
- 4.2.3 The price charged in 4.2.1 and 4.2.2 may take into account differentials due to delivery schedules, points of delivery, and other similar considerations.
- 4.2.4 Establishment of Price or Value. The following reciprocal pricing principles will apply:
- 4.2.4.1 The price established for inventory stock materiel will be the Supplying Participant's stock list price.

4.2.4.2 The price for new procurement will be the same price paid to the contractor or vendor by the Supplying Participant.

4.2.4.3 The price for in shop repair or technical assistance services rendered will be based on the Supplying Participant's standard price or, if not applicable, a price equal to only the direct costs associated with providing the services, for example, supply stock list prices and actual labor charges.

4.2.4.4 The price for services rendered by military personnel or government employees in a temporary duty status will be based on the individual's actual per diem and transportation costs, plus payroll costs for civilian labor.

Prices charged will exclude all taxes and duties which the Receiving Participant is exempted from paying under other agreements which the Participants have concluded. Upon request, the Participants will provide information sufficient to verify that these reciprocal pricing principles have been followed and that prices do not include waived or excluded costs.

4.3 **Replacement in Kind Transaction.** Both Participants will maintain records of all transactions, and the Receiving Participant will exercise Replacement in Kind by transferring to the Supplying Participant LSSS identical or substantially identical and in the same condition (materiel only) to that delivered or performed by the Supplying Participant and which are satisfactory to the Supplying Participant. If the Receiving Participant does not replace in kind within the terms of a replacement schedule consented to or in effect at the time of the original transaction, with time frames which may not exceed (12) twelve months from the date of the original transaction, the transaction will be deemed reimbursable and governed by paragraph 4.2 above, except that the price will be established based on the date the Replacement in Kind was to take place.

4.4 **Exchange for Equal Value Transaction.** The term "equal value" means LSSS defined in monetary terms using actual or estimated prices in effect at the time a transaction is approved. Both Participants will maintain records of all transactions, and the Receiving Participant will pay the Supplying Participant by transferring to the Supplying Participant LSSS that are equal in value to that delivered or performed by the Supplying Participant and which are satisfactory to the Supplying Participant. If the Receiving Participant does not exchange for equal value within the terms of an exchange schedule, consented to or in effect at the time of the original transaction with time frames which may not exceed (12) twelve months from the date of the original transaction, the transaction will be deemed a reimbursable transaction and governed by

paragraph 4.2 above, except that the price will be established based on the date the Exchange for Equal Value was to take place.

- 4.5 **Temporary Use of Equipment.** The temporary use of general-purpose vehicles and other items of military equipment not designated on the U.S. Munitions List or designated by Canada under law or regulation, will be as per a written temporary use order. The Supplying Participant may also recover incremental costs for additional expenses incurred as a result of the temporary use. These incremental costs can include transportation, packaging, loss, damage beyond fair wear and tear, repairs, laundering, and any preparatory work required to adapt the material to the requirements of the Receiving Participant and upon return of the material, to restore it to its original condition.
- 4.6 When a definitive price for the Order is not mutually determined in advance, the Order, pending concurrence on final price, will set forth a maximum limitation of liability of the Participant ordering the LSSS. The Participants will promptly enter into negotiations to establish the final price. No provision in this MOU will serve as a basis for an increased charge for LSSS if such LSSS would be available without charge, or for a lesser charge, under the terms of another MOU or Agreement.
- 4.7 The Invoice will contain an identification of this MOU or applicable IA and will be in the format set forth by the supplying organization. Wherever possible or practicable, the Invoice will be accompanied by evidence of receipts by the Receiving Participant of the LSSS.

SECTION 5

CUSTOMS DUTIES AND TAXES

- 5.1 The provisions of any tax and customs relief agreements applicable to the acquisition of materials, services, supplies and equipment between the Participants will apply to LSSS transferred under this MOU. The Participants will cooperate to provide proper documentation to maximize tax and customs relief. The Supplying Participant will inform the Receiving Participant whether the price charged for LSSS includes taxes or customs duties that the Supplying Participant cannot recover. In such cases, the price paid by the Receiving Participant will include the tax or customs duties not recoverable by the Supplying Participant.

SECTION 6

LIABILITY

- 6.1 Liabilities incurred as a result of activities carried out under the provisions of this MOU will be settled in accordance with the Agreement Concerning the Establishment of certain Mutual Defence Commitments between the Government of the United States of America and the Government of Canada dated 19 August 1994.

SECTION 7

SECURITY

- 7.1 Classified information and materiel provided or generated pursuant to this MOU will be protected in compliance with the General Security of Military Information Agreement between the Government of the United States of America and the Government of Canada dated 20 January 1962.

SECTION 8

SETTLEMENT OF DISPUTES

- 8.1 Any disputes regarding the interpretation or implementation of this MOU will be resolved only by consultation between the Participants and will not be referred to a national or international tribunal or any other third party for settlement.

SECTION 9

AMENDMENT

- 9.1 This MOU may only be amended with the mutual written consent of both Participants.
- 9.2 Amendment of IA under this MOU may be made through the mutual written consent of the authorities authorized to conclude IA as described in paragraph 3.7.

SECTION 10

DURATION, WITHDRAWAL AND TERMINATION

- 10.1 This MOU will remain in effect for a period of (10) ten years and will be automatically extended annually thereafter unless terminated.

- 10.2 Either Participant may withdraw from this MOU upon presentation of (180) one hundred and eighty days notice to the other Participant.
- 10.3 This MOU may be terminated at any time with the mutual written consent of the Participants.

SECTION 11

EFFECTIVE DATE AND SIGNATURE

11.1 This MOU, which is written in (2) two originals, both in the English language, will become effective on the date of the last signature.

**FOR THE DEPARTMENT OF DEFENSE
OF THE UNITED STATES OF AMERICA**

**FOR THE DEPARTMENT OF
NATIONAL DEFENCE OF CANADA**

Original signed by

Robert T. Dail

Brigadier General, U.S. Army

Director for Logistics

U.S. Joint Forces Command, Norfolk, VA

Original signed by

L. M. Lashkevich

Brigadier-General

J4 Materiel/Director General Logistics

National Defence Headquarters, Ottawa

Date: 21 Oct 99

Date: 21 Oct 99

ANNEX A

MINIMUM ESSENTIAL DATA ELEMENTS

1. MOU or IA Identifier, as applicable.
2. Date of Order.
3. Country, ministry, department, or command to be supplied with LSSS.
4. Numerical listing of stock numbers of items, if any.
5. Quantity and description of materiel/services requested.
6. Quantity furnished.
7. Unit of measurement.
8. Unit price in currency of billing country.
9. Quantity furnished (#6) multiplied by unit price (#8).
10. Other Costs: Enter additional costs (for example: customs, packing fees, transportation).
11. Currency of billing country.
12. Total Order amount expressed in currency of billing country.
13. Name (typed or printed), signature, and title of authorized Ordering or requisitioning representative.
14. Payee to be designated on remittance.
15. Designation and address of office to be billed.
16. Designation and address of office to receive remittance.
17. Recipient's signature acknowledging services or supplies received on the Order or requisition or a separate supplementary document.
18. Document number of Order or requisition.
19. Receiving organization.
20. Issuing organization..

21. Transaction type.
22. Fund citation or certification of availability of funds when applicable under Participants' procedures.
23. Date and place of original transfer; in the case of an exchange transaction, a replacement schedule including time and place of replacement transfer.
24. Name, signature, and title of authorized acceptance official.
25. Additional special requirements, if any, such as transportation, packaging, etc,
26. Name, signature, date, and title of official who actually issues LSSS.